

REMARKS

Initially, Applicant would like to express appreciation to the Examiner for the detailed Final Official Action provided.

Applicants acknowledge with appreciation the Examiner's indication of allowable subject matter in claim 3.

Upon entry of the above amendment, claim 11 will have been amended, and claim 4 will have been canceled. Accordingly, claims 3, 6, and 11 are currently pending. Applicants respectfully request reconsideration of the outstanding rejections and allowance of claims 3, 6, and 11 in the present application. Such action is respectfully requested and is now believed to be appropriate and proper.

The Examiner has rejected claim 11 under 35 U.S.C. § 101 as being drawn to nonstatutory subject matter. The Examiner takes the position that claim 11 recites part of a human in the phrase "an engaging member to be inserted in a bone", and thus contains nonstatutory subject matter.

Although Applicants do not necessarily agree with the Examiner's rejection of claim 11 on this ground, nevertheless, Applicants have amended claim 11 to clearly obviate the above noted ground of rejection in order to expedite prosecution of the present application. In particular, claim 11, as amended, sets forth a rod connector including, inter alia, a connector main body swingably attached to a shank; a rod supporting portion; and a pressure fixing device; "wherein a rear end of the shank comprises a flange portion that is configured to prevent removal of the shank from an engaging member configured to be inserted in a bone". This amendment is fully supported by the specification, including the claims and drawings, and no prohibited new matter has been added.

Applicants respectfully submit that claim 11, as amended, does not include part of a human body, and includes only statutory subject matter. In this regard, claim 11 includes the phrase “wherein a rear end of the shank comprises a flange portion that is configured to prevent removal of the shank from an engaging member configured to be inserted in a bone”. The claim positively recites “a rear end of the shank” and “a flange portion” as elements of the device. However, the phrase “an engaging member configured to be inserted in a bone” indicates that the engaging member is shaped and positioned (*i.e.*, configured) *to be* inserted in a bone, but does not indicate that the engaging member *is* inserted in the bone. In other words, as claimed, the engaging member is not yet inserted in a bone or a human body. Moreover, the entire phrase “a rear end of the shank comprises a flange portion that is configured to prevent removal of the shank from an engaging member configured to be inserted in a bone” indicates that the flange portion is shaped and positioned (*i.e.*, configured) to prevent removal of the shank from an engaging member, but does not indicate that the engaging member is part of the claimed device. Thus, the claimed device of claim 11 includes, inter alia, a shank comprising a flange portion. The claimed device of claim 11 does not include an engaging member nor a bone. Accordingly, the claimed rod connector of claim 11 includes a shank and a flange portion that are configured to be assembled with an engaging member and a bone, but the claimed rod connector does not include the bone, per se. Therefore, it is believed that amended claim 11 is clearly directed to statutory subject matter and that the rejection of claim 11 under 35 U.S.C. § 101 has been overcome.

Accordingly, in view of the above noted amendments and remarks, it is respectfully submitted that amended claim 11 fully complies with 35 U.S.C. § 101, and Applicants respectfully request reconsideration and withdrawal of the rejection of claim 11 under 35 U.S.C. § 101.

The Examiner has rejected claims 6 and 11 under 35 U.S.C. § 103(a) as being unpatentable over BURGESS et al. (U.S. Patent Application Publication No. 2003/0114853) in view of ALTARAC et al. (U.S. Patent No. 6,616,668).

However, Applicants note that BURGESS et al. and ALTARAC et al. fail to teach or suggest the subject matter claimed in claims 6 and 11. In particular, claim 6 sets forth a rod connector including, inter alia, a connector main body swingably attached to a shank; a rod supporting portion; and a pressure fixing device, “wherein a rear end of the shank comprises a flange portion that is configured to prevent removal of the shank from an engaging member, and wherein the flange portion is arranged coaxially with the shank”. Claim 11 sets forth a rod connector including, inter alia, a connector main body swingably attached to a shank; a rod supporting portion; and a pressure fixing device, “wherein a rear end of the shank comprises a flange portion that is configured to prevent removal of the shank from an engaging member configured to be inserted in a bone”.

The BURGESS et al. publication discloses a rod connector including a main body 76, a shank 68, a spherical end portion 72, and a pressure fixing device 34. However, as recognized by the Examiner, the BURGESS et al. publication fails to teach or suggest a flange provided on the shank.

The ALTARAC et al. patent discloses an adjustable transverse connector including an extension portion 42 and a flanged area 52. The flanged area 52 limits the distance that the extension portion can travel into the bore. See particularly figure 3E. However, as shown in the figures and as

described in the ALTARAC et al. patent, the flanged area 52 limits the travel of the extension portion *into* the bore. The flanged area 52 does not prevent removal of the extension portion.

Moreover, in the BURGESS et al. device, the shank 68 contacts the member 70. See particularly figures 5 and 6, in which it is shown that the shank 68 is contacted on its surface by member 70. Thus, the member 70 prevents the addition of an element positioned circumferentially around the shank 68. Therefore, the shank 68 *could not include* a flanged area therearound. Accordingly, the BURGESS et al. publication teaches away from providing a flanged area around the shank 68, since the member 70 precludes the addition of a flanged area around the shank 68 in the BURGESS et al. device. Therefore, the ALTARAC et al. patent fails to cure the deficiencies of the BURGESS et al. device, and even assuming, arguendo, that the teachings of BURGESS et al. and ALTARAC et al. have been properly combined, Applicants' claimed rod connector would not have resulted from the combined teachings thereof.

Further, there is nothing in the cited prior art that would lead one of ordinary skill in the art to make the modification suggested by the Examiner in the rejection of claims 6 and 11 under 35 U.S.C. § 103(a) over BURGESS et al. in view of ALTARAC et al.. Thus, the only reason to combine the teachings of BURGESS et al. and ALTARAC et al. results from a review of Applicants' disclosure and the application of impermissible hindsight. Accordingly, the rejection of claims 6 and 11 under 35 U.S.C. § 103(a) over BURGESS et al. in view of ALTARAC et al. is improper for all the above reasons and withdrawal thereof is respectfully requested.

Accordingly, Applicants respectfully request reconsideration and withdrawal of all the rejections, and an early indication of the allowance of claims 3, 6, and 11.

SUMMARY AND CONCLUSION

In view of the foregoing, it is submitted that the proposed amendment is proper and that none of the references of record, considered alone or in any proper combination thereof, anticipate or render obvious Applicant's invention as recited in claims 3, 6, and 11. The applied references of record have been discussed and distinguished, while significant claimed features of the present invention have been pointed out.

Accordingly, consideration of the present amendment, reconsideration of the outstanding Official Action, and allowance of the present amendment and all of the claims therein are respectfully requested and now believed to be appropriate.

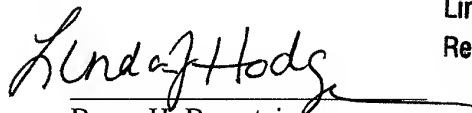
Applicants have made a sincere effort to place the present application in condition for allowance and believe that they have now done so.

Any amendments to the claims which have been made in this amendment, which do not narrow the scope of the claims, and which have not been specifically noted to overcome a rejection based upon the prior art, should be considered cosmetic in nature, and to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto.

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Should there be any questions, the Examiner is invited to contact the undersigned at the below listed number.

Respectfully submitted,
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